

REMARKS

The Office Action issued a restriction requirement. Applicant traverses the restriction requirement because the claims are not independent or distinct. The statutory basis for a restriction requirement reads as follows:

If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions.

35 U.S.C. § 121 (emphasis added). Thus, the PTO may restrict an application only if the claimed invention satisfies both requirements (*i.e.*, both independent and distinct). The Office Action only states that the claimed invention is distinct, but does not address the other requirement that the claims be independent. While the PTO has taken the position (as indicated in MPEP 806) that a restriction requirement may be proper if the claimed invention is independent or distinct, this position contradicts the mandate of 35 U.S.C. § 121. Accordingly, the pending restriction requirement is improper.

The claims are not “independent” (*i.e.*, not dependent) under 35 U.S.C. § 121. Namely, the claims disclose a relationship between the two or more subjects disclosed, that is, they are connected in design, operation, and effect. MPEP 802.01 give two examples of how claims can be “independent”; namely, (1) species under a genus which species are not usable together as disclosed; or (2) process and apparatus incapable of being used in practicing the process. The Office Action has not established either case.

Based on the foregoing, Applicant’s request reconsideration and withdrawal of the restriction requirement.

The Applicants provisionally elect to prosecute Group I (claims 1-17, 20 and 24).

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Respectfully submitted,

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